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of profits be denied. *Straus v. Notaseme Hosiery Co.*, 240 U. S. 179, 36 Sup. Ct. 288.

For a discussion of these cases in connection with another recent case, see NOTES, p. 763.

**TRADE-MARKS AND TRADE NAMES — PROTECTION APART FROM STATUTE — TERRITORIAL LIMITATION OF TECHNICAL TRADE-MARK.** — In 1872 the Allen and Wheeler Co. used the words "Tea Rose" as a trade-mark on its flour, making sales throughout Ohio and Pennsylvania, but never advertising nor selling its "Tea Rose" brand in Alabama or the adjoining states. In 1885, without notice of this prior adoption, the Hanover Star Milling Co. used the same brand on its flour for sales throughout Alabama, where it acquired the reputation of being the "Tea Rose Company." In 1895 the Steeleville Milling Co. adopted the same design, and in 1912 sold a quantity of flour of that brand to Metcalf for sale in Alabama. The Hanover Co. obtained a temporary injunction in the District Court, but the United States Circuit Court of Appeals for the Fifth Circuit reversed the decree because of the prior use by the Allen and Wheeler Co. In another district this latter company obtained an injunction against the Hanover Co., but this in turn was reversed by the United States Circuit Court of Appeals for the Seventh Circuit on the ground that the Hanover Co. had acquired a valid trade-mark in Alabama. Because of this diversity on fundamental questions, the cases were brought to the Supreme Court by writs of *certiorari* before final disposition in the lower courts. *Held*, that the Hanover Co. had acquired a valid trade-mark in Alabama. *Hanover Star Milling Co. v. Metcalf*, 240 U. S. 403.

For a discussion of this case with two other recent cases, see NOTES, p. 763.

**TRIAL — VERDICT — JOINT TORTFEASORS: SEVERANCE OF DAMAGES.** — In an action against joint maintainers of a nuisance the jury found a verdict for \$700 against one defendant and for \$150 against the other. On interrogation by the court they stated their purpose to find the plaintiff's damages equal to \$850 and to divide them between the two defendants. The trial court entered judgment for \$850 against both defendants. *Held*, that the judgment stand. *Wands v. City of Schenectady*, 156 N. Y. Supp. 860 (App. Div.).

The Supreme Court of Michigan has recently upset a verdict of this sort. *Rathbone v. Detroit United Ry.*, 154 N. W. 143. For a criticism of the Michigan decision, see 29 HARV. L. REV. 344.

**TRUSTS — CREATION AND VALIDITY — CHARITABLE TRUSTS: PREFERENCES — RULE AGAINST PERPETUITIES.** — A will provided for perpetually maintaining a home for "educated Protestant gentlewomen whose means are small," preference to be given to the lineal descendants of seven named relatives and six friends. *Held*, that the trust is charitable, and so is not void as infringing the Rule against Perpetuities. *Matter of MacDowell*, 55 N. Y. L. J. 61 (Court of Appeals).

Under the present New York statutes, the old English law of charitable trusts for undetermined beneficiaries has been restored. *Allen v. Stevens*, 161 N. Y. 122, 55 N. E. 568. Under that law, whether the invalidity of perpetual trusts without defined beneficiaries is due, as is commonly stated, to the Rule against Perpetuities, or more properly to a rule against inalienability, charitable trusts form a clear exception. See GRAY, RULE AGAINST PERPETUITIES, 3 ed., §§ 589-607. Such trusts must be limited to purposes necessarily charitable as defined by the Statute of Elizabeth. *Morice v. Bishop of Durham*, 9 Ves. 399, 10 Ves. 522. But the purpose in question is clearly within the established conception, for the courts have upheld trusts for "reduced gentlewomen," "lady teachers in need of rest," and "wornout clerks." *Attorney General v.*

*Power*, 1 Ball & B. 145; *In re Estlin*, 72 L. J. Ch. 687; *In re Gosling*, 16 T. L. R. 152. See TUDOR ON CHARITIES, 4 ed., 46-60. Even trusts "for elderly widows and spinsters," although not further limited to charity in the will, have been construed to apply only to those who are poor and are so held charitable. *Thompson v. Corby*, 27 Beav. 649; *Re Dudgeon*, 74 L. T. (N. S.) 613. Again, trusts for the relatives of the founder if permanent and limited to those who are poor are held charitable and valid. *Attorney General v. Northumberland*, 7 Ch. D. 745. See GRAY, RULE AGAINST PERPETUITIES, 3 ed., § 683 and n. *A fortiori*, gifts for general charitable purposes with a preference for a particular lineage are valid trusts. *Dexter v. Harvard College*, 176 Mass. 192, 57 N. E. 371; *Franklin v. Armsfield*, 2 Sneed (Tenn.) 305, 351. See *Attorney General v. Sidney Sussex College*, 34 Beav. 654, 667. And scholarships with such preferences were early recognized. *Flood's Case*, Hobart 136. Cf. *Spencer v. All Souls College*, Wilmut 163. Furthermore, were the preferences invalid, the general charitable gift would be good. See *Dexter v. Harvard College*, *supra*, 196. The over-riding charitable purpose should prevail even if some of the directions for applications cannot be carried out because not charitable. *In re Douglas*, 35 Ch. D. 472. See *Hunter v. Attorney General*, [1899] A. C. 309, 324. Accordingly it seems entirely proper to carry out the donor's intention in the principal case. Cf. *Matter of Robinson*, 203 N. Y. 380, 96 N. E. 925.

TRUSTS — INCOME AND CORPUS — PROFITS BY SALE OF STOCK: APPORTIONMENT BETWEEN LIFE TENANT AND REMAINDERMAN. — The trustee of a *corpus* largely composed of stocks, was given a power of purchase and sale. The right to the profits gained in some of the transactions made under this power, are now contested by the life tenant and the remainderman under the trust. *Held*, that the life tenant is entitled to all the gains realized from dealings in the stock, except so much as are necessary to make the present *corpus* equal in value to the original *corpus* plus the amount that the original stocks increased in value while still in the hands of the trustee. *In re Barron's Will*, 155 N. W. 1087 (Wis.).

In the case of a trust of a share in a business the net profits earned go to the life tenant. *Heighe v. Littig*, 63 Md. 301. See LORING, A TRUSTEE'S HANDBOOK, 3 ed., 124. The decision in the principal case seems to be rested on this principle. But clearly a power of purchase and sale of stock is given the trustee only as a means of protecting the *corpus*, and does not constitute the trust estate a business in which the life tenant has an interest. Hence, not the earnings of the trustee, but only the earnings of the corporation whose shares have been bought, constitute the life tenant's income. Now an increased market value of the stock of a corporation may be due to undeclared earnings as well as unearned increment. As Wisconsin gives the declared dividends of stock to income or *corpus*, accordingly as the fund from which they are declared has accrued from earnings or unearned increment, it would seem as if on principle a similar rule should apply to the apportionment of gains due to increased value of stock. See *Miller v. Payne*, 150 Wis. 354, 377, 383, 136 N. W. 811, 819, 821; see 20 HARV. L. REV. 551. But see 2 PERRY, TRUSTS, 5 ed., § 545, note, p. 94. Such a course, however, is impractical, if not impossible. Therefore, the courts have almost invariably added the entire increase in value of the stock to the *corpus*. *Graham's Estate*, 198 Pa. 216, 47 Atl. 1108; *In re Robert's Will*, 40 Misc. 512, 82 N. Y. Supp. 805. Cf. *Billings v. Warren*, 216 Ill. 281, 74 N. E. 1050. All the profits from a sale thus belong to the remainderman, and the life tenant is restricted to his share of the declared dividends. And undoubtedly it is more in accord with the intention of the settlor that the fluctuation should occur in the *corpus* rather than the income. Moreover, as the remainderman must bear the loss of any shrinkage in the funds, it is but equitable that he take the gain. See *Graham's Estate*, *supra*, 219. Again the life